

S. HRG. 104-775

~~STRENGTHEN THE NATIONAL ENVIRONMENTAL~~  
Y 4. EN 2: S. HRG. 104-775 ACT

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Strengthen the National Environment...

HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
OVERSIGHT AND INVESTIGATIONS  
OF THE  
COMMITTEE ON  
ENERGY AND NATURAL RESOURCES  
UNITED STATES SENATE  
ONE HUNDRED FOURTH CONGRESS  
SECOND SESSION

ON A  
HEARING TO RECEIVE TESTIMONY ON EFFORTS BY THE FEDERAL  
LAND MANAGEMENT AGENCIES TO STRENGTHEN THE NATIONAL EN-  
VIRONMENTAL POLICY ACT DECISION MAKING PROCESS

SEPTEMBER 26, 1996

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## CONTENTS

### STATEMENTS

	Page
Akaka, Hon. Daniel K. U.S. Senator from Hawaii .....	12
Bennett, Hon. Robert F., U.S. Senator from Utah .....	7
Bradley, Hon. Bill, U.S. Senator from New Jersey .....	6
Burns, Hon. Conrad, U.S. Senator from Montana .....	6
Craig, Hon. Larry E., U.S. Senator from Idaho .....	4
Hayes, Nancy K., Chief of Staff and Counselor, Bureau of Land Management, Department of the Interior .....	23
Johnston, Hon. J. Bennett, U.S. Senator from Louisiana .....	3
McGinty, Kathleen A., Chair, Council on Environmental Quality, Executive Office of the President .....	13
Murkowski, Hon. Frank H., U.S. Senator from Alaska .....	9
Thomas, Hon. Craig, U.S. Senator from Wyoming .....	1
Thomas, Jack Ward, Chief, Forest Service, Department of Agriculture .....	19
Zelms, Jeffrey L., President and Chief Executive Officer, The Doe Run Re- sources Corporation .....	56

### APPENDIX

Responses to additional questions .....	59
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Answer. The information we gathered as a result of the EIS developed for the New World mine proposal will provide information not only for the land swap, but it is already providing information for the land withdrawal EIS and is being used extensively for the cleanup planning at the site. I anticipate that each of these activities will be expedited because of the previous work accomplished.

Question 3. The U.S. seems determined to complete its proposed mineral withdrawal in the New World District without preparation of an EIS under NEPA. How can this be justified?

The withdrawal is not an environmentally neutral action. Mining under contemporary, regulatory standards can be more beneficial to the environment than a withdrawal from mining. The mine company can generate revenue to assure sound environmental reclamation of current and even past conditions. Withdrawals from mining can have significant impacts on the human environment of the community as well. NEPA requires the Administration to assess all of these alternatives to the proposed mineral withdrawal. What is the Administration position on preparation of an EIS for the proposed mineral withdrawal in the New World District?

Answer. An EIS is currently underway for the mineral withdrawal for the 19,000 acres the President announced on August 25, 1995. Before there is a decision made on the withdrawal of the lands associated with the Crown Butte property, there will be a NEPA analysis prepared and the public will have an opportunity to comment on the new proposal. There have been public scoping meetings held on the 19,000 acre withdrawal and the public will have the opportunity to comment on the environmental effects of this proposal when the draft EIS is released.

The Administration position is that any federal action that significantly affects the quality of the human environment requires the preparation of an EIS. The Forest Service and Bureau of Land Management currently have underway an EIS for the mineral withdrawal in the New World mining district.

#### QUESTIONS FROM SENATOR JOHNSTON

Question 1. In your prepared statement, you noted that CEQ "can and does play a unique role in minimizing redundancy, mediating conflict, fostering efficiency and creativity, and ensuring scarce federal resources are wisely used."

A glaring example of redundant, conflicting, inefficient and wasteful federal regulation is the dual regulation of mixed radioactive and hazardous waste by the Nuclear Regulatory Commission under the Atomic Energy Act and the Environmental Protection Agency under the Resource Conservation and Recovery Act.

By all accounts, NRC regulation of mixed wastes provides adequate protection to the public health and safety and the environment. EPA itself has conceded that its RCRA rules "can be prescriptive and may be impractical to implement" with respect to mixed wastes. It has recognized that if a waste is "currently or can be managed under enforceable, good management practices that protect human health and the environment, then . . . full RCRA hazardous waste requirements may not be necessary." (60 Fed. Reg. 20993, Apr. 28, 1995.) Indeed, in June 1995, EPA's Solid Waste Office suggested amending RCRA to provide that mixed wastes be regulated by NRC alone. Nonetheless, EPA has yet to take decisive action to resolve the issue.

Redundant EPA regulation of mixed waste imposes exorbitant additional costs on waste generators while providing no appreciable safety or environmental benefits. To the contrary, it may have made matters worse by creating a class of "orphan" wastes for which no treatment or disposal facilities are available that meet both NRC and EPA requirements.

This problem has persisted for over 11 years and still no resolution is in sight. What action is CEQ taking to help resolve the problem?

Answer. This issue was specifically raised when CEQ and the Office of Management and Budget co-authored a comprehensive report study on federal facilities cleanup. (See Improving Federal Facilities Cleanup: Report of the Federal Facilities Policy Group (Council on Environmental Quality and Office of Management and Budget, Oct. 1995)). Throughout 1995, CEQ convened discussions among EPA, DOE, and other affected agencies on the administrative reforms needed to address areas of concern identified in the report. Those discussions resulted in a sustained dialogue between DOE and EPA on the mixed waste issue. CEQ has continued to play an active role as these agencies and OMB's Office of Information and Regulatory Affairs seek to resolve the significant technical, practical, and policy issues raised by this problem.

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HEARING ON THE NUCLEAR  
COMMISSION

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Oversight Hearing on the Nuclear Re...

HEARING  
BEFORE THE  
SUBCOMMITTEE ON ENERGY AND POWER  
OF THE  
COMMITTEE ON COMMERCE  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED FOURTH CONGRESS  
SECOND SESSION

SEPTEMBER 5, 1996

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## CONTENTS

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	Page
Testimony of:	
Jackson, Shirley Ann, Chairman, Nuclear Regulatory Commission; accompanied by Kenneth C. Rogers, Commission Member; Niles J. Diaz, Commission Member; Greta J. Dicus, Commission Member; and Edward McGaffigan, Jr., Commission Member .....	13
Additional material submitted for the record:	
Nuclear Regulatory Commission, letter dated October 25, 1996, to Hon. Dan Schaefer, enclosing responses for the record .....	47

### Standard Reactors

Although construction of new nuclear capacity in the U.S. does not appear likely at the moment, the possibility of a standard nuclear power plant as a source for new generating capacity still exists. The use of certified standard reactor designs is expected to enhance safety, reduce cost, and streamline future licensing of new nuclear generation capacity. The NRC has issued final design approvals for two standard reactor designs and is in the process of certifying these designs by rule-making. We expect that the certification of the two standard reactor designs—the General Electric Advanced Boiling Water Reactor and the Combustion Engineering System 80+—will be completed this year. In fact a public Commission meeting on design certification was held on August 27, 1996, where both the NRC staff and industry representatives addressed the Commission about outstanding design certification issues. The NRC is also reviewing the Westinghouse AP600 standard design application. The AP600 is a novel light water reactor design which employs passive safety features and greater use of modular construction. The NRC has issued its Draft Safety Evaluation Report for the AP600.

### NUCLEAR MATERIALS AND NUCLEAR WASTE

The nuclear materials area is different from reactor regulation in that the NRC must have a regulatory program to cover a wide variety of materials licensees. Some of the issues in this area are the same as those faced by reactor licensees. Here, too, licensees are under economic pressures, and when making decisions, must ensure safe and economic operations. Although the NRC continues to focus *directly* on the safe use of radioactive materials by approximately 7000 medical, academic, industrial, and commercial users and an additional 38,000 general licensees, the NRC is also expanding efforts to improve our regulatory effectiveness in our relationships with other regulatory entities in the materials area.

One area where improvement has been made is in the cooperation between the Commission and states on the regulation of radioactive materials. The Agreement State program covers approximately two-thirds of the nuclear materials licensees in the U.S. The Commission has implemented the Integrated Materials Performance Evaluation Program (IMPEP) to assess materials programs in both NRC Regional Offices and in Agreement States. Working closely with the States, licensees, and citizen groups, the NRC developed a policy statement on Agreement State Adequacy and Compatibility with NRC regulatory programs. In reviewing the Agreement State Program the NRC determines the adequacy of the program and the compatibility of the State's regulations with NRC regulations. The policy statement provides clear definitions of the terms "adequate" and "compatible" and fosters consistency in how the terms are applied to the NRC Agreement State Program.

This policy statement will become effective after completion and Commission approval of implementing guidance. We have recognized a growing problem with radioactive sources and devices that have been improperly transferred or disposed of, with the result that they have become mixed with metal scrap intended for recycling. Last year, the Commission approved formation of a joint Agreement State-NRC Working Group to review this problem and to develop recommendations for regulatory actions to improve licensee performance in this area. The Working Group held five public meetings and two public workshops and recently provided a report to NRC management. This report and its recommendations are currently being evaluated by NRC management.

The Commission has initiated a program to evaluate whether our radioactive materials program, its standards, and associated regulations are appropriately focused on the health and safety issues of significance for these licensees. As an initial step, we are reevaluating our regulation of the medical use of nuclear materials.

The NRC is also continuing its streamlining of the materials licensing and inspection processes. The objective is to use work process re-engineering to establish more efficient and automation-assisted processing of materials license and amendment requests. If successful, similar methods will be used to improve the materials inspection process.

The NRC is continuing to work with the Environmental Protection Agency (EPA) to eliminate duplicative regulation. NRC and EPA reached an agreement on how to eliminate unnecessary dual regulation of air emission of radionuclides under the Atomic Energy Act and the Clean Air Act. This action will provide a regulatory basis for the EPA to rescind its regulation (40 CFR 61, Subpart I). NRC is also working with other Federal agencies, including EPA, to promote consistent approaches in regulating ionizing radiation.

For fuel cycle facilities, NRC is continuing rulemaking and guidance development to define more clearly the regulatory base and provide an integrated, risk-informed

Mr. BILIRAKIS. I will maybe make this a final question because I know the Chairman has to be someplace else approximately at noon.

Are we getting much complaining, if that is the right word, from some of the people that are being regulated, the doctors, other facilities using by-product materials? Do they think that there is overregulation, that there is too much of a burden on them?

Ms. JACKSON. I think depending upon the day of the week and who you ask, yes.

Mr. BILIRAKIS. I see.

Ms. JACKSON. But, in fact, that is part of what—if we decided that we will remain in—or wish to remain in the medical—the regulation of the medical uses of by-product materials, we will be undertaking rulemaking to address some of the more—the concerns about—

Mr. BILIRAKIS. So they would have an input in that regard?

Ms. JACKSON. Absolutely. Absolutely.

Mr. BILIRAKIS. Thank you.

Thank you very much, Mr. Chairman.

Mr. SCHAEFER. The Chair thanks the gentleman and would just echo his words, Ms. Jackson, and members of the Commission.

Any improvements that we could do per your suggestions, please let us know so that we can make the job a little bit easier and provide for better safety controls.

I want to thank you very much for your excellent testimony and we will be back in touch one of these days.

Ms. JACKSON. Thank you very much. We appreciate both your criticism and your support.

Mr. SCHAEFER. The subcommittee is now adjourned.

[Whereupon, at 12 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows.]

NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C.  
October 25, 1996

The Honorable DAN SCHAEFER,  
Chairman, Subcommittee on Energy and Power  
Committee on Commerce  
United States House of Representatives  
Washington, DC 20515

DEAR MR. CHAIRMAN: Enclosed are the Nuclear Regulatory Commission's responses to post-hearing questions from the September 5, 1996, hearing on General Oversight of the Nuclear Regulatory Commission.

Responses to several questions from Representative Markey are not included in this package.

Sincerely,

DENNIS K. RATHBUN, DIRECTOR  
Office of Congressional Affairs

Enclosures: As Stated  
cc: Rep. Frank Pallone

POST-HEARING QUESTIONS FOR THE NUCLEAR REGULATORY COMMISSION SUBMITTED  
BY THE MAJORITY

*Question 1.* You point out in your testimony that NRC will be working with DOE on the Hanford tank farm privatization effort. In that situation, from what source will funding for the NRC's regulatory role come from?

*Answer.* The FY 1997 Energy and Water Development Appropriations Act appropriates \$3.5 million to NRC for work with DOE in the program of remediation for high-level waste currently contained in tanks located on the Hanford Reservation

dress under its Atomic Energy Act authority. Such issues could differ depending on which option DOE selects. There is also a potential issue concerning the NRC's ability to use appropriated funds "for any purpose related to licensing of any defense activity or facility of the Department of Energy." See 42 U.S.C. 7272. Legislation may be needed to address this issue.

*Question 11.* Your testimony states that the Commission plans to have its new strategic plan in place by the beginning of calendar year 1997, yet its budget request will not reflect the new plan until perhaps fiscal year 1999. Does the NRC anticipate any difficulty in implementing the plan due to the lag between its budget requests and its time line for putting the plan in place? Will these changes result in a leaner fiscal year 1998 budget request to Congress?

*Answer.* The NRC has underway a Strategic Assessment and Rebaselining of the NRC activities. A principal outcome of this process will be a strategic plan which will establish a strategic framework that will guide future NRC decision-making. In addition, the plan will provide a basis for aligning the NRC's budget with its mission and goals. As you noted, the plan will be available in early 1997. This will be about the same time that the Administration is expected to be finalizing its fiscal year 1998 budget for submission to Congress. Therefore, the strategic plan itself cannot be the driving force behind our fiscal year 1998 budget request. However, we have reviewed our budget against the preliminary results from our strategic assessment and rebaselining initiative and found no major inconsistencies in scope and direction. We will use the strategic plan as the framework for the fiscal year 1999 budget which we will begin to develop in early 1997.

Even though we have not been able to use the final results of the strategic assessment and rebaselining initiative in developing our fiscal year 1998 budget, please be assured that we have developed our budget with the view of requesting only those resources necessary for us to effectively and efficiently protect public health and safety.

*Question 12. (A)* Commercial mixed hazardous-radioactive waste is dual-regulated by the NRC and the Environmental Protection Agency, which complicates the management of these wastes and actually prevents certain mixed wastes from appropriate treatment and disposal because adequate NRC/RCRA (Resource Conservation and Recovery Act) permitted treatment and disposal facilities simply do not exist. Involuntary on-site storage puts some NRC licensees into automatic violation of RCRA's land ban storage prohibition.

Have the Commission and EPA put any resources into developing a strategy to resolve this issue?

*Answer.* Yes. Since the mid-1980's, the Nuclear Regulatory Commission and the Environmental Protection Agency have cooperated in seeking solutions to the issues associated with the joint regulation of mixed waste. The regulated community identified several issues to the agencies that they felt warranted development of guidance by NRC and EPA. These issues included a definition and methodology for the identification of mixed waste, siting guidelines for mixed waste disposal facilities, a mixed waste disposal facility design that met the requirements of both agencies, and guidance on the testing and storage of mixed waste. NRC and EPA responded by publishing, in 1987, joint guidance documents that addressed the definition of mixed waste, siting guidelines for mixed waste disposal facilities and a conceptual design for a mixed waste disposal facility.

In addition, in response to a May 1990 request from the Host States Technical Coordinating Committee, the agencies developed the National Profile on Commercially Generated Low-Level Radioactive Mixed Waste, which was the first comprehensive evaluation of mixed waste volumes, characteristics, and treatability on a national basis. In March 1992 the agencies published joint guidance on mixed waste testing for comment and in August 1995 published joint guidance on mixed waste storage for comment. Currently, NRC staff has completed revisions to the mixed waste testing guidance and is preparing a comment summary for inclusion in the final guidance. The NRC and EPA staffs have reviewed the comments on the mixed waste storage guidance and are preparing a final version for publication. The NRC staff expects to publish final testing and storage guidance in early 1997.

*Question 12. (B)* Commercial mixed hazardous-radioactive waste is dual-regulated by the Nuclear Regulatory Commission and the Environmental Protection Agency, which complicates the management of these wastes and actually prevents certain mixed wastes from appropriate treatment and disposal because adequate NRC/RCRA (Resource Conservation and Recovery Act) permitted treatment and disposal facilities simply do not exist. Involuntary on-site storage puts some NRC licensees into automatic violation of RCRA's land ban storage prohibition.

Would the Commission support requiring EPA to promulgate a contingent management exclusion for mixed waste in the final hazardous waste identification rule



for process wastes, which would be based on a finding that the existing NRC regulations constitute appropriate management of mixed waste and that such waste, when managed under NRC controls, does not pose a substantial present or potential threat to human health or the environment, and thus does not fall within the definition of hazardous waste?

Answer. Yes, NRC supports consideration of a contingent management exclusion for mixed waste on the basis that regulation of this waste under the Atomic Energy Act (AEA) ensures adequate protection of public health and safety. In March 1992, NRC staff provided EPA with comments on the proposed repromulgation of the "mixture and derived from" rules. In May 1992, NRC staff provided EPA with comments on the first proposed Hazardous Waste Identification Rule (HWIR). Finally, in April 1996, NRC staff provided comments on the final proposed HWIR. In commenting on these proposed rules NRC staff urged EPA to:

- 1) Establish concentrations of hazardous constituents, based on health and environmental risks, below which a listed waste would not be considered hazardous; and
- 2) Develop a contingent management approach for the disposal of mixed wastes where the conditional exemption from RCRA would be based on compliance with the regulations to control the radiological hazards. This approach would be acceptable as long as case-specific demonstrations were made showing that the protection offered by a licensed radioactive waste disposal facility was adequate to protect the public health and safety from all significant hazards posed by the waste.

NRC has repeatedly supported regulatory approaches that provide flexibility to mixed waste generators, as long as public health and safety and the environment are adequately protected. The NRC also stated that it would review the details of mixed waste management systems in any supplemental HWIR rulemakings and encouraged EPA's timely completion of its evaluation of the AEA requirements for the disposal of radioactive waste to determine whether these requirements would provide an acceptable level of protection for hazardous waste emplaced in a low-level waste disposal facility designed, constructed and operated in accordance with 10 CFR Part 61.

#### POST-HEARING QUESTIONS FOR THE NUCLEAR REGULATORY COMMISSION SUBMITTED BY REPRESENTATIVE BILIRAKIS

*Question 1.* It is my understanding that the States regulate all medical uses of ionizing radiation not produced in a reactor. Is the NRC aware of any safety problems as a result of State control in this area?

Answer. The NRC does not review the effectiveness of State radiation control programs in the non-Atomic Energy Act (non-byproduct material) areas or in the 21 non-Agreement States. Therefore, the NRC is not aware of specific problems as a result of State control of non-byproduct material.

*Question 2.* What weight does NRC assign to public comments on rulemaking? If there was overwhelming opposition to an NRC proposed rule, how does the agency reconcile those concerns? Specifically, if the NRC received 81 out of 85 comment letters opposing the rulemaking addressing the unauthorized use of radioactive material, why would the agency continue to move forward with this initiative?

Answer. All public comment letters on a proposed rule are considered in the development of any final rule. The Federal Register notice for any final rule includes a discussion of all comments received, the staff's resolution of those comments, any changes that were made to the final rule as a result of those comments, and the staff's reasoning for making changes or not making changes suggested by the commenters, as well as noting the number of comments received. The consideration of comments is a complex process of analyses, and while the number of positive and negative comments received is important, it cannot be the sole determinant of the Commission's action. In the final analysis, the Commission must determine if a rule is necessary to provide reasonable protection to the public and workers. Frequently those who comment on a rule are those who are burdened by it, not those who benefit from it. Moreover, frequently the concerns raised by the commenters are limited to specific aspects of a proposed rule, and objections or endorsements do not necessarily apply to the entire rule. In the case cited, the proposed rule on unauthorized use of radioactive material, there were 85 comment letters, with 81 opposing the rule. In the process of evaluating and responding to the issues raised by the commenters, the NRC staff made changes to the final rule that it believed would remove the strongest objections. Accordingly, a draft of the final rule incorporating these changes was provided to the Agreement States, and placed in the NRC's Public Document Room, to obtain additional input prior to forwarding the draft final